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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL  
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OFFICE OF MANAGING DIRECTOR

In the Matter of:

MOTOROLA SATELLITE  
COMMUNICATIONS, INC.

Request for Pioneer's Preference  
to Establish a Low-Earth Orbit  
Satellite System in 1610-1626.5 MHz  
Band

To: Chief Engineer

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ET Docket No. 92-28

PP-32

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APR 23 1992

OFFICE OF MANAGING DIRECTOR

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MOTION TO STRIKE

Federal Communications Commission  
Office of the Secretary

Constellation Communications, Inc. ("CONSTELLATION")

by counsel, hereby requests that the Commission strike the  
"Supplement to Request for Pioneer's Preference" submitted by  
Motorola Satellite Communications, Inc. ("Motorola") on  
April 10, 1992. If the Commission is unwilling to strike this  
pleading, a public notice must be issued that establishes a  
date for interested parties to comment on this filing.

On July 30, 1991, Motorola submitted to the Commission  
a Request for Pioneer's Preference for its proposed Iridium  
low-Earth Orbit ("LEO") satellite system.<sup>1/</sup> This request

<sup>1/</sup> Request for Pioneer's Preference, Motorola Satellite  
Communications, Inc. filed July 30, 1992.

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cited - intersatellite links and bidirectional use of the spectrum - as the distinct technical innovations associated with the Iridium system. On March 9, 1992 the FCC issued a Public Notice that established April 8, 1992 as the date for submission of comments on the Motorola Request. Pursuant to this Public Notice CONSTELLATION and the other LEO applicants submitted comments on Motorola's July 30, 1992 request. Two days later, on April 10, 1992 Motorola submitted to the Commission its "Supplement to Request for Pioneer's Preference." This was precisely nine months and eleven days after Motorola filed its original "Request for Pioneer's Preference." This was the final day for submission of new requests for pioneer's preference to operate a LEO system in the RDSS bands (1610-1626.5 MHz and 2385.5 MHz to 2500 MHz).<sup>2/</sup> Certainly, no party to this proceeding has been provided an opportunity to comment on this filing.

The Motorola supplemental filing should be stricken because it is ex parte. Any written presentation not served on the parties to a restricted proceeding is a direct violation of

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<sup>2/</sup> On March 11, 1992 the Commission released a Public Notice that established April 10, 1992 as the final day for filing additional Pioneer's preference requests with regard to the establishment of Low-Earth Orbit ("LEO") systems proposing to operate in the 1610-1626.5 and 2483.5 MHz bands. ("RDSS" bands). Public Notice, MIMCO No. 22205, released March 11, 1992.

the Commission ex parte rules and must be rejected.<sup>3/</sup> This proceeding became ex parte on April 8, 1992 when CONSTELLATION, TRW, Loral/Qualcomm and Ellipsat formally opposed the Motorola Request for Pioneer's Preference.<sup>4/</sup> The confidential material contained in the April 10, 1992 filing has not been served on CONSTELLATION or the other applicants. The supplemental filing therefore must be stricken. Any other result would undermine the integrity of the Commission's proceedings and deny other parties the fairness, impartiality and due process guaranteed by the Commission's rules.<sup>5/</sup>

The fact that Motorola submitted its supplemental filing on April 10, 1992 makes it clear that Motorola has conceded that at a minimum it must be treated as a new filing. This new material could have a direct bearing on the Commission's consideration of all the pending requests for pioneer's preference to operate LEO satellites in the RDSS bands.<sup>6/</sup> It is important to note that CONSTELLATION received its copy on April 15, 1992.

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<sup>3/</sup> See 47 C.F.R. § 1.1202(b).

<sup>4/</sup> See 47 C.F.R. § 1.1208(c).

<sup>5/</sup> See 47 C.F.R. § 1.1200.

<sup>6/</sup> CONSTELLATION has in a separate pleading filed today opposed to Motorola's request for confidential treatment.

This new filing cannot be considered as a mere adjunct to Motorola's July 30, 1992 filing. This is because it requests a pioneer's preference for a number of purported new innovative technologies that were not identified previously. All interested parties must have an opportunity to digest and comment on the contentions made in this filing. Certainly, if CONSTELLATION and the other parties seeking pioneer's preference in this proceeding do not have an opportunity to comment, their interests will be severely prejudiced. This impact is increased dramatically by the Motorola request for confidentiality of some of the material contained in the filing. It would be an intolerable situation if the Commission were to make a finding on a pioneer's preference based on material that was not available to the public.

In order to avoid this result the Commission must either strike the entire Motorola supplemental filing or treat it as a new submission and place it on public notice.<sup>7/</sup> Additionally, the Commission must reject Motorola's request for confidential treatment and either return the confidential material to Motorola or have it placed in the record.

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<sup>7/</sup> This public notice period must be at least 30 days as required by Sections 1.402 and 1.405 of the Commission's Rules 45 C.F.R. §§ 1.402 1.405.

As the Commission examines this issue it must recognize that the timing of Motorola's submission of its supplemental filing two days after the comments were due on its Request for Pioneer's Preference was clearly by design. It merely represents another cynical attempt by Motorola to manipulate the process in this proceeding. Under these circumstances, the Commission must take whatever steps necessary to insure that a full and fair hearing is provided to all the parties to this proceeding. Otherwise, the rights of the other applicants will be irreparably harmed.

**CONCLUSION**

For these reasons, CONSTELLATION urges the Commission to strike the Motorola "Supplement to Request for Pioneer's Preference." At a minimum, the Commission must place this filing on public notice to allow all parties the opportunity to comment.

Respectfully submitted,

CONSTELLATION COMMUNICATIONS, INC.



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April 23, 1992

CERTIFICATE OF SERVICE

I, Robert A. Mazer, hereby certify that a copy of the foregoing Motion to Strike of Constellation Communications, Inc. was sent by first class United States mail, postage prepaid, this 23th day of April 1992, to the following:

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